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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/516,387	08/09/2005	Robin John Batterham	4623-045790	4715
28289 7590 10/09/2008 THE WEBB LAW FIRM, P.C. 700 KOPPERS BUILDING 436 SEVENTH AVENUE PITTSBURGH, PA 15219			EXAMINER ZHU, WEIPING	
			ART UNIT 1793	PAPER NUMBER
			MAIL DATE 10/09/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/516,387

**Applicant(s)**

BATTERHAM ET AL.

**Examiner**

WEIPING ZHU

**Art Unit**

1793

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 September 2008.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-18 and 21 is/are pending in the application.  
4a) Of the above claim(s) 15-18 is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-14 and 21 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO/S508)  
Paper No(s)/Mail Date \_\_\_\_\_  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Status of Claims***

1. Claims 1-14 and 21 are currently under examination, wherein no claim has been amended and claim 21 has been newly added in applicant's amendment filed on July 24, 2008.

Applicant's election of Invention I, claims 1-14, without traverse in the reply filed on July 24, 2008 is acknowledged. The non-elected Invention II, claims 15-18, has been withdrawn by the applicant in the same reply.

### ***Status of Previous Rejections***

2. The previous rejections of claims 1-4 and 12 under 35 U.S.C. 102(b) and the previous rejections of claims 5-11, 13 and 14 under 35 U.S.C. 103(a) as stated in the Office action dated January 25, 2008 have been maintained.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-4, 12 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Brown (US 4,960,584).

Claims 1-4 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Brown (US 4,960,584) as stated in the Office action dated January 25, 2008.

With respect to the newly added claim 21, the teaching of Brown ('584) as applied to the rejections of the instant claims 1 and 3 as started in the Office action dated January 25, 2008 is further applied properly herein.

Brown ('584) further discloses that the emitters, which distribute the leaching solution in a generally umbrella-shaped pattern (col. 3, lines 51-54), are tightly spaced with a spacing as low as 1.0 ft (col. 4, lines 53-64), which reads on the claim limitation that the line or narrow band is less than 1 m wide.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 5-11, 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown ('584) as stated in the Office action dated January 25, 2008.

***Response to Arguments***

5. The applicant's arguments filed on July 24, 2008 have been fully considered but they are not persuasive.

First, the applicant argues that Brown ('584) does not discuss saturating the heap or establishing a plug flow of the leaching solution through the heap. In response, the examiner notes that Brown ('584) discloses that the emitters are positioned to aid in substantially uniform saturation of ore bed with the leaching solution (col. 4, lines 53-64).

Second, the applicant argues that the teaching of Brown ('584) is not equivalent to the instantly claimed moving curtain. In response, the examiner notes that the tightly spaced emitters (col. 4, lines 53-64) distributing the leaching solution in a generally umbrella-shaped pattern (col. 3, lines 51-54) reads well on the claim limitation of moving the curtain along the length of the section of the heap in a series of steps. The ground of rejection of the claim limitation is proper and maintained.

Third, the applicant argues that there is an inadequate teaching in Brown ('584) as to whether the disclosed rate range results in the saturation of the heap section and Brown ('584) does not disclose the same utility (i.e. saturation of the heap) over the entire disclosed flow range. In response, see examiner's response to applicant's 1<sup>st</sup> argument above. Brown ('584) discloses that the ore bed is substantially uniformly saturated with the leaching solution (col. 4, lines 53-64). It would have been obvious to one of ordinary skill in the art that the flow rate range disclosed by Brown ('584) would inherently results in the saturation of the heap section. The flow rate range of Brown ('584) overlaps the claimed flow rate range (col. 4, lines 43-51). Brown ('584) does disclose the same utility (i.e. the same utility of any flow rates within the disclosed flow rate range) over the entire disclosed flow range.

Fourth, the applicant argues that the contact times disclosed in Brown ('584) suggest an application time far exceeding the time periods recited in the instant claims 8-11. In response, the reasons of the rejections of the claim limitations as stated in the Office action dated January 25, 2008 are proper and maintained.

Fifth, the applicant argues that Brown ('584) does not teach the claimed features recited in the instant claims 13 and 14. In response, the examiner notes that the plastic sheet 13 of Brown ('584) extends beyond the top surface of the heap (col. 2, lines 49-55 and Figure 1), which prevents any run-off of the leaching solution and obviously reads on the claimed features of the instant claim 13. Forming furrows and supplying the leach solution into the furrows to prevent any run-off of the leaching solution as recited in the instant claim 14 would be obvious to one of ordinary skill in the art.

### ***Conclusion***

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Weiping Zhu whose telephone number is 571-272-6725. The examiner can normally be reached on 8:30-16:30 Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Roy King can be reached on 571-272-1244. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Roy King/  
Supervisory Patent Examiner, Art  
Unit 1793

WZ

9/26/2008

**Application Number****Application/Control No.**

10/516,387

**Applicant(s)/Patent under  
Reexamination**

BATTERHAM ET AL.

**Examiner**

WEIPING ZHU

**Art Unit**

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